

PT 00-36

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

MIDWEST COMMUNITY CHURCH)		
)	A.H. Docket #	99-PT-0037
Applicant)		
)	Docket #	98-60-191
v.)		
)	Parcel Index #	14-2-15-27-02-201-017
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Barry D. Dix, attorney at law, appeared on behalf of the holders of the legal title to this parcel, J. Lloyd Tomer and Christine Tomer, husband and wife.

Synopsis:

The hearing in this matter was held at the Department of Transportation Building, 1100 Eastport Plaza Drive, Collinsville, Illinois, on November 1, 1999, to determine whether or not Madison County Parcel Index No. 14-2-15-27-02-201-017 qualified for exemption from real estate taxation for the 1998-assessment year.

Rev. Jerry L. Casey, senior pastor of the Midwest Community Church, (hereinafter referred to as the "Church") was present at the hearing. Mr. R. Frank Tomer, son of Mr. J. Lloyd Tomer was present on behalf J. Lloyd Tomer and his wife, Christine Tomer (hereinafter referred

to as the “Tomers”). Both Rev. Casey and Mr. R. Frank Tomer testified on behalf of the Tomers.

The issues in this matter include: first whether the Church owned this parcel for real estate tax exemption purposes during the 1998-assessment year; secondly, whether the Church is a religious organization; and finally, whether the Church was either in the process of adapting this parcel and the house thereon for use as a parsonage or actually used this parcel as a parsonage during the 1998-assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the church owned this parcel for real estate tax exemption purposes during the 1998-assessment year. It is also determined that the Church is a religious organization. Finally it is determined that the Church was either in the process of preparing the house on this parcel to be used as a parsonage or actually used the house on this parcel as a parsonage during the 1998-assessment year.

It is therefore determined that this parcel and the house thereon should be exempt from real estate taxation during the 1998-assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that this parcel and the house located thereon were not in exempt ownership and not in exempt use during the 1998-assessment year, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 6B.

2. The Church was incorporated by affidavit on November 15, 1993, pursuant to the Religious Corporation Act, effective July 1, 1872, which may be found at 805 **ILCS** 110/0.01 *et seq.* (Tomer Ex. No. 2)

3. During 1998, there were about 280 members of the Church and the average attendance at Sunday morning worship services was approximately 230. (Tr. p. 27)

4. During 1998 worship services were held on Sunday mornings at 10:00 a.m. and on Wednesday evenings at 6:45 p.m. (Tr. p. 27)

5. On February 2, 1995, the Bank of Edwardsville conveyed the parcel here in issue to J. Lloyd Tomer and Christine Tomer, husband and wife, pursuant to a warranty deed. (Dept. Ex. No. 2B)

6. On September 3, 1997, J. Lloyd Tomer was elected a trustee of the Church. (Tr. pp. 29 & 30, Tomer Ex. No. 3)

7. On December 22, 1997, the Church, as user, and J. Lloyd Tomer, as donor, entered into an agreement for use of real estate whereby J. Lloyd Tomer donated 100% of the use of the parcel here in issue and all of the improvements located thereon to the Church for the period January 1, 1998, through December 31, 1998. (Dept. Ex. No. 2E)

8. The consideration for this agreement is the donor's desire to assist in the development and growth of Church's religious organization. Pursuant to the agreement, this parcel could be used for any purpose the Church deemed appropriate, including but not limited to a parsonage, youth retreats, church administration, or marital retreats. (Dept. Ex. No. 2E)

9. The Church was responsible for all expenses, repairs and maintenance costs, and was to maintain adequate insurance on this property, naming the Tomers as loss payee. (Dept. Ex. No. 2E)

10. The Church determined that the parcel here in issue and the house thereon should be used as a parsonage for Rev. Casey, his wife, his son age 16, and daughter age 13. It is a condition of Rev. Casey's employment that he live in the house on this parcel. Rev. Casey does not have any ownership interest in this parcel or the house thereon. (Tr. pp. 20 & 22, Dept. Ex. No. 2F)

11. During 1998, the Church paid the utilities on the house on this parcel. The Church paid for the insurance on this house, made repairs, and did the maintenance on the house. (Tr. pp. 26 & 28)

12. The Church did not pay any rent or other consideration to the Tomers during 1998 for the use of the house. (Tr. p. 29, Dept Ex. 2G)

13. On December 22, 1997, J. Lloyd Tomer and the Church executed the agreement for use. Between that date and March 1998, when the Casey family moved into the house on this parcel the Church was in the process of cleaning up and preparing the house for use as a parsonage. Initially the yard needed to be cleaned up. All of the lights outside the house had been broken. Inside the house there were numerous electrical problems that violated the electrical code and which needed to be corrected. The house had two furnaces. One furnace to heat each side of the house. A new natural gas furnace had been brought in to heat one side of the house. It was anticipated that natural gas would soon become available in this neighborhood. However, that did not happen. (Tr. pp. 24 & 25)

14. There are several members of the Church who are licensed electricians. A member of the Church is a licensed plumber. These members and other volunteers repaired the electrical outlets and brought the electrical system up to code. They also converted the new furnace from natural gas to propane so the entire house could be heated. By the time all of the work was completed it was March 1998 and Rev. Casey and his family could move in. (Tr. pp. 25 & 26)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to this constitutional grant of authority, the General Assembly has enacted property tax exemption provisions. Concerning property used for religious purposes 35 ILCS 200/15-40 provides as follows:

All property used exclusively for religious purposes, or used

exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989); and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the Church to establish that it is entitled to an exemption.

Pursuant to the use agreement executed by J. Lloyd Tomer and the Church, the Church had possession, control, and the right to use the parcel here in issue and the house located thereon during the entire 1998-assessment year. During that time the Tomers did not receive any

rent or other payment from the Church. The Church, during 1998, prepared the house for use as a parsonage and did use it as a parsonage for Rev. Casey and his family. I therefore conclude that the Tomers, pursuant to the use agreement, held the parcel here in issue and the house thereon in trust for the use and benefit of the Church. The Illinois Courts have held that property will qualify for exemption where it is held in trust for the use and benefit of an exempt organization. *See People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). *See also Community Mental Health Council, Inc. v. Department of Revenue*, 186 Ill.App.3d 73 (1st Dist. 1989). In the case of *Southern Illinois University Foundation v. Booker*, 98 Ill.App.3d 1062 (5th Dist. 1981) the Court determined as follows:

The key elements of ownership are control and the right to enjoy the benefits of the property.

Since the Church controlled the property and the right to enjoy the benefits, I conclude that the Tomers owned this parcel and the residence located thereon which they held in trust for the use and benefit of the Church during the 1998-assessment year. The Tomers received no rent or other income from the Church during 1998 for providing this parcel and the house thereon to the Church. The Church paid the utilities, insurance, upkeep, and maintenance on the house on this parcel. I therefore conclude that the Church was the owner of this parcel for real estate tax exemption purposes during the 1998-assessment year.

On November 15, 1993, the Church was incorporated pursuant to the Religious Corporation Act. During 1998, the Church had about 280 members and an average attendance at Sunday morning worship services of approximately 230. During 1998, the Church conducted worship services on Sunday mornings at 10:00 a.m. and on Wednesday evenings at 6:45 p.m. I consequently conclude that the Church is a religious organization.

Between December 22, 1997, the date of the use agreement, and March 1998 when the Casey's moved into the house on this parcel, volunteers from the Church cleaned up the yard on this parcel. The electrical system in portions of the house violated the electrical code. A number

of electrical repairs were needed both inside and outside the house. The licensed electricians who were members of the Church, with the help of other Church volunteers, made the repairs which were necessary and brought the house up to code. It was also necessary to convert the natural gas furnace to propane so that one side of the house could be heated. The licensed plumber who was a member of the Church, along with other volunteers, performed this work. Since all of the work was performed by volunteers it took about two and one-half months to complete. As soon as it was completed Rev. Casey and his family moved into the house on this parcel. Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). As soon as the Church received the possession of this parcel, pursuant to the use agreement, it proceeded to repair and adapt the house on this parcel so that it could be used as a parsonage.

For a house to qualify as a parsonage pursuant to 35 ILCS 200/15-40, the statute requires that the house and the parcel on which it is located be owned by a church or religious institution and used as housing for its minister. The statute also sets forth that a house will be considered to be exclusively used for religious purposes if it is a condition of the minister's employment that he and his family reside in that facility. In this case, it is a condition of Rev. Casey's employment that he and his family reside in the house on this parcel. It has also been determined that this parcel and the house thereon were owned by the Church for real estate tax exemption purposes. Consequently, I conclude that the parcel here in issue and the house thereon qualified for exemption during all of the 1998-assessment year either because it was in the process of adaptation for exempt use or because it was actually used by the Church as a parsonage for Rev. Casey.

I therefore recommend that Madison County Parcel Index No. 14-2-15-27-02-201-017 be exempt from real estate taxation for the 1998-assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
June 6, 2000